

TRUMP ADMINISTRATION ACCOUNTABILITY PROJECT



Report on Possible Misconduct in the Nomination of Doug Manchester to Ambassador of the Bahamas, and Others

Possible Violation of the Law

Did President Trump violate the Foreign Service Act or federal statute prohibiting bribery of public officials by nominating major donors to ambassadorship posts? Did his administration engage in a federal pay-for-play scheme, nominating those who promised to donate more money? What possible charges could be investigated?

Introduction

Among the many powers granted to the president in the Constitution is the power to appoint men and women to serve as ambassadors to foreign nations.¹ The Senate then reviews and affirms (or rejects) these presidential appointees.² The president has extraordinarily wide latitude in selecting his representatives to foreign nations: there are no specifically iterated requirements that political appointees for ambassador, no foreign service that an appointee must have performed.³ In fact, no prior experience with foreign relations is required to be appointed as a U.S. ambassador. Although the majority of ambassadors are career diplomats, it is a long-standing practice for presidents to allot some portion of favorable diplomatic posts to political and personal allies.⁴ And this power has historically been used as a way to reward top donors: many large donors may hope that the greater their donation (or the greater the sum of the donations they ‘bundle’ and raise on behalf of the president), the greater their chances of a diplomatic post overseas.⁵ Although the practice of paying for public posts is unappealing, it is also bipartisan.⁶ And presidents from both parties have largely skirted consequences, either political or legal, for this practice, largely because it hinges on unspoken understandings: the donations are not explicitly transactional, and posts are not promised for a certain price tag.

President Trump has taken advantage of the latitude afforded to his office in naming ambassadors to foreign nations and has ensured that several of his largest donors are among those representing the United States abroad. Roughly 44% of President Trump’s ambassador appointments are people with political ties (most typically donors).⁷ In contrast, less than one third of the foreign posts in the Obama administration were occupied by donors.⁸ Furthermore, some of President Trump’s appointees to foreign posts, particularly the facts surrounding the failed nomination of Doug Manchester, suggest a more explicit *quid pro quo* arrangement, and call into question the legality of the appointment.

Facts

One day after he was sworn in as president, Donald Trump nominated Doug Manchester, a millionaire who had donated \$1 million to President Trump's inauguration fund, as ambassador to the Bahamas.⁹ The nomination stalled in the Senate for two years.¹⁰ In September of 2019, Mr. Manchester (still awaiting Senate confirmation for the ambassador' post), flew a private jet's worth of supplies to the Bahamas to aid in Hurricane Dorian recovery.¹¹ President Trump tweeted his gratitude for Mr. Manchester's relief trip, and referred to him as "hopefully the next Ambassador to the Bahamas."¹²

Three days after the tweet, RNC Chairwoman Ronna McDaniel asked Mr. Manchester for a donation of \$500,000.¹³ In his email reply, Mr. Manchester said: "As you know I am not supposed to do any, but my wife is sending a contribution for \$100,000. Assuming I get voted out of the [Foreign Relations Committee] on Wednesday to the floor we need you to have the majority leader bring it to a majority vote ... Once confirmed, I our [sic] family will respond!"¹⁴ Not only did he promise additional funds in exchange for a vote out of the Senate Foreign Relations Committee, he also copied two Republican Senators on that committee: Senators Rand Paul and Jim Risch.¹⁵ Senator Risch was alarmed by this apparent pay-for-play, and alerted the White House, which then asked Mr. Manchester to withdraw his name from consideration.¹⁶ He did so, and the RNC also distanced itself from Mr. Manchester, disavowing his actions and returning the \$100,000 contribution to his wife.¹⁷

As mentioned above, several other ambassadors nominated by President Trump are also large donors. Most notably, Gordon Sondland, who served as ambassador to the European Union and testified in the impeachment hearings about President Trump's dealings with Ukraine, donated to \$1 million to the inaugural fund.¹⁸ Two other ambassadors in the Trump administration also donated over \$1 million dollars to his inaugural committee, and received plum foreign posts.¹⁹ At least 14 of President Trump's ambassadorial nominees are mega donors who have donated an average of \$350,000 to his inaugural fund.²⁰

Possible Misconduct

Although there are no personal or professional requirements for a person to be nominated as an ambassador, the Foreign Service Act of 1980 does mandate that presidents do not consider political donations as a factor in the decision.²¹ Additionally, federal statute prohibits public officials from accepting bribes.²²

A. Consideration of Contribution to Political Campaigns

The Foreign Service Act of 1980 dictates that "contributions to political campaigns should not be a factor in the appointment of an individual as a chief of mission."²³ However, the vague wording of the law provides ample loopholes, particularly given the lack of required qualifications for ambassadorial nominees.²⁴ Further evidence is necessary to determine whether President Trump overtly considered the donor's contributions in selecting his ambassadorial

nominee. Absent clear evidence of a comment or discussion illustrating that President Trump considered the donation as a factor in his selection, it would be difficult to make a strong legal case for violation of the Foreign Services Act. And there must be some evidence that the nomination would not have occurred minus the contribution.²⁵ The difficulty of mounting a legal case is demonstrated by the fact that this practice has a strong bipartisan history without legal consequences, although President Trump has taken the practice to new levels.²⁶

B. Bribery of Public Officials

In addition to the potential Foreign Service Act violation, it is a criminal act for a public official to accept or attempt to accept a bribe.²⁷ 18 U.S.C. § 201(b), the federal statute criminalizing the public officials engaging in bribery, contains four elements. To establish that an official was engaged in bribery, the government must prove that: “(i) a thing of value was...*demanded, sought, received, or accepted or agreed to be received or accepted by...*; (ii) a present or future public official; (iii) for an “official act” (iv) with corrupt intent or intent to ...be influenced...”²⁸ The Department of Justice has previously noted that a campaign contribution is ‘something of value’ for purposes of the statute.²⁹

While it is clear that Doug Manchester intended to bribe an official (the senators he copied on the email), the senators’ refusal to cast a favorable vote in the Foreign Service Committee signifies that the first element, agreeing to receive or accept something of monetary value, was not met. Although one could read the RNC Chairwoman’s request of \$500,000 as seeking something of value, she is not a public official as defined by the statute,³⁰ nor did she openly offer an official in exchange for the donation. Further evidence is necessary to determine whether Doug Manchester and President Trump had their own separate, explicit *quid pro quo* agreement, perhaps surrounding his \$1 million donation to the inaugural committee. If that evidence exists, then the intent element—which is critical in establishing this case—would be met. Without such a finding, not all elements of this crime have been established.

18 U.S.C. 201(c) proscribes public officials from accepting gratuities.³¹

It criminalizes a public official’s agreement to receive or accept anything of value “for or because of any official act performed or to be performed by such public official.”³² This provision eliminates the intent requirement as found in § 201(b), and therefore would be a much stronger case against President Trump’s rewards to his largest donors. However, the Supreme Court requires that the government prove a link between the “thing of value” given to the public official and the “specific ‘official act’ for or because of which it was given.”³³ Under this requirement, the same evidence necessary to establish a violation of § 201(b) or the Foreign Service Act would need to be found for a violation of § 201(c) as well.

Conclusion

Further investigation into communications and discussions regarding the donations and

subsequent ambassador appointments between President Trump and Doug Manchester is warranted on the grounds that there may have been a violation of both the Foreign Service Act of 1980 and 18 U.S.C. § 201, if the communications outline an explicit *quid pro quo* arrangement. At this time, the public evidence does not warrant further investigation into the appointments of additional ambassadors.

¹ U.S. CONST. art. II, § 2.

² *Id.*

³ See 22 U.S.C § 3944(a)(1) (simply stating that the ambassador “should possess clearly demonstrated competence to perform the duties of a chief of mission, including, to the maximum extent practicable, a useful knowledge of the principal language or dialect of the country in which the individual is to serve, and knowledge and understanding of the history, the culture, the economic and political institutions, and the interests of that country and its people.”).

⁴ Henry Farrell, *U.S. ambassadorships are destination tourism for the mega-rich*, WASH. POST (Nov. 28, 2019), <https://www.washingtonpost.com/politics/2019/11/28/us-ambassador-appointments-are-destination-tourism-mega-rich/>

⁵ Nicholas Confessore, *Study Puts ‘Cost’ to Landing Embassy Post*, N.Y. TIMES (Jan. 31, 2013), <https://www.nytimes.com/2013/02/01/us/politics/study-puts-cost-to-landing-diplomatic-post.html>.

⁶ *Id.*

⁷ John Fritze, *How well does Trump know \$1 million donors like Gordon Sondland? Some now work for him*, USA TODAY (Nov. 21, 2019), <https://www.usatoday.com/story/news/politics/2019/11/20/donald-trump-dismisses-relationship-1-million-donor-gordon-sondland/4252260002/>.

⁸ *Id.*

⁹ *Possible pay-to-play scheme for ambassador role in Trump administration uncovered by CBS News*, CBS NEWS, (Nov. 11, 2019, 10:41 AM), <https://www.cbsnews.com/news/doug-manchester-possible-pay-to-play-scheme-for-ambassador-role-in-trump-administration-uncovered/>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Aaron Rugar, *New investigation suggests Republicans took ambassadorial pay-to-play to new levels*, VOX MEDIA (Nov 18, 2019, 5:10 PM), <https://www.vox.com/2019/11/18/20970842/ronna-mcdaniel-rnc-doug-manchester-ambassador-bahamas-trump>.

¹⁹ Fritze, *supra* note vi.

²⁰ Emily R. Siegel et. al., *Donors to the Trump inaugural committee got ambassador nominations. But are they qualified?*, NBC NEWS (April 3, 2019, 4:30 AM), <https://www.nbcnews.com/politics/donald-trump/donors-trump-inaugural-committee-got-ambassador-nominations-are-they-qualified-n990116>.

²¹ 22 U.S.C § 3944(a)(3).

²² 18 U.S.C. § 201(b)(2).

²³ 22 U.S.C § 3944(a)(3).

²⁴ See *supra* note iii, detailing the vague considerations for ambassadorship.

²⁵ Nathaniel Persily & Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. PA. L. REV. 119, 136 (2004).

²⁶ The average percentage of political appointees to ambassadorships is 30% during an administration. President Trump’s political nominees to foreign posts is 45%, which is the greatest amount since President Franklin D. Roosevelt. See Farrell *supra* note iv.

²⁷ 18 U.S.C. § 201(b)(2).

²⁸ *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 404-405 (1999).

²⁹ U.S. DEP'T OF JUSTICE, CRIMINAL RESOURCE MANUAL: BRIBERY OF PUBLIC OFFICIALS, <https://www.justice.gov/archives/jm/criminal-resource-manual-2041-bribery-public-officials>.

³⁰ The statute defines a public official as a “Member of Congress, Delegate, or Resident Commissioner...or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof...”. 18 U.S.C. § 201(a)(1).

³¹ 18 U.S.C. § 201(c)(2).

³² *Id.*

³³ *Sun-Diamond Growers of California*, 526 U.S. at 414.